

E-FILED on 2/22/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FAMILY MORTGAGE CORPORATION
NO. 15,

Plaintiff,

v.

PERRY L. GREINER,

Defendant.

No. C-03-01380 RMW

ORDER DENYING MOTION TO FURTHER
ENFORCE SETTLEMENT AGREEMENT;
DENYING MOTION TO ENJOIN
ENFORCEMENT OF STATE ACTION


[Re Docket No. 166]

Plaintiff and counter-defendant Family Mortgage Corporation No. 15 ("FMC") and counter-defendant Eastern Saving Bank ("ESB") (collectively "plaintiffs") ask the court to enforce a settlement between themselves and defendant Perry Greiner. In May 2006, the court granted a previous motion to enforce the settlement between the parties over objection by Greiner that there was no settlement agreement. After the court issued its order, Greiner filed an action in Santa Clara County Superior Court on October 19, 2006, *Greiner v. Family Mortgage Service Corporation No. 15, et al.*, Case No. 106CV073333 ("State Court Action") asserting causes of action relating to the property that was at issue

1 in the instant action. Plaintiffs ask the court to enjoin the State Court Action and for an award of
2 attorney's fees and costs incurred in bringing the instant motion.

3 While the court is sympathetic to plaintiffs' frustration, the motion to enforce the judgment to
4 enjoin the State Court Action is denied. This order should not be construed as suggesting that the state
5 court proceedings are not barred by *res judicata*. Plaintiffs' motion for attorney's fees is denied without
6 prejudice to any later claim for attorney's fees incurred stemming from Greiner's filing in state court.

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8 DATED: 2/22/08


RONALD M. WHYTE
United States District Judge

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8 Counsel are responsible for distributing copies of this document to co-counsel that have not registered
9 for e-filing under the court's CM/ECF program.

10 **Dated:** 2/22/08 /s/ MAG
11 **Chambers of Judge Whyte**

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